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point of view of conveying to the student any valuable scientific or professional knowledge.

The statistics and arguments presented above . . . warrant the establishment of a parallel one year course of Applied Latin. . . . Such a parallel course would tend to exert greater intensity of interest in the students preparing for college because of their common purpose. And that far larger mass of students for whom the high school is the last institution of formal training would profit

1. by a Latin course better suited to their practical needs.

2. by a year's preparation for the study of modern inflected languages.

3. by valuable training in the foundations of English grammar and word-derivation, and finally,

4. by a direct knowledge of scientific Latin most intimately related to practical life.

I shall have some comments to make upon this vocational programme in the next issue. Meanwhile it may be added that upon enquiry it was found that this list of 2000 practical Latin words was embodied in a thesis presented to the University of Pennsylvania last spring, which is as yet unpublished.

G. L.

ON THE LEGALITY OF THE TRIAL AND CON- DEMNATION OF THE CATILINARIAN CONSPIRATORS

This paper makes no attempt to deal with the question of evidence. Assuming the guilt of the accused to have been established, it aims to present the trial and the sentence in their historical and legal setting.

The right of appeal in cases affecting the *caput*—citizenship or life—was guaranteed to the Roman citizen by the Valerian and the Porcian laws. When, shortly before the time of the Gracchi, the Romans began to legislate for the establishment of standing courts, *quaestiones perpetuae*, with the power to try capital cases and to decide them finally, the people considered the new institution no infringement on their rights; for the transfer of judicial power from themselves to such a court was wholly voluntary on their part. Special judiciary commissions, *quaestiones extraordinariae*, were viewed in a different light. The custom of appointing such commissions for the trial and punishment of a particular individual or of a particular class of individuals had arisen in the fifth century B.C., in a time of almost absolute senatorial rule, and therefore the power of appointing such extraordinary commissions was vested in the senate¹. But when about the beginning of the third century B.C. popular sovereignty was well established, the third Valerian law, passed in 300 B.C., was so interpreted as to forbid the creation of a special court except by a vote of the people; this custom was adhered to throughout the third century. But after the close of the war with

Hannibal the senate began to resume the sovereign powers which it had exercised in the fifth century and had lost near the close of the fourth, and to abridge correspondingly the rights of the comitia. Early in the second century in two known instances it dared on its own responsibility to appoint special commissions for the trial of citizens. The first was created in 186 B.C. for the trial of the Bacchanalians²; the second occasion was the appointment of two commissions, in 180 B.C., for the detection and trial of poisoners in Rome and Italy³.

Similar in character to the special judiciary commission appointed by the senate, but far more sweeping in effect, was the *senatus consultum ultimum*: *Videant consules <and perhaps other magistrates>, ne quid respublica detrimenti capiat*. This in crises armed the consuls <and other magistrates> with absolute power of life and death over the citizens. By these means the senate circumvented the laws of appeal. It can be seen at once that the nobility might make use of this extraordinary power to rid itself of a political adversary, so as to render impossible any reform of which it did not approve.

Whether the senate should continue to exercise this power became a burning party question of the revolution initiated in the time of the Gracchi. Against its continuance Ti. Gracchus planned a new law, which he did not live to see enacted⁴. His own followers were ruthlessly condemned, without the privilege of appeal, by an extraordinary *quaestio* under P. Popillius Laenas, consul in 132 B.C.⁵ To put an end to such circumvention of a well-established right of the people, C. Gracchus in his first tribunate, 123 B.C., carrying into effect the plan of his brother, passed the often mentioned *Lex Sempronia De Provocatione*, which absolutely forbade capital sentence upon a citizen without an order of the people⁶. The wording of the statute indicates that it was intended, not to abolish extraordinary commissions and powers, but to allow their establishment in no other way than by popular vote. It reiterated, too, the article of the Porcian statute which prohibited the infliction of the death penalty on civilians⁷. Anyone who violated the statute could be brought by the tribunes before the comitia centuriata on a charge of *perduellio*, and could be punished by interdict from fire and water⁸.

It is well known that, in spite of this Sempronian statute, the senate took advantage of an election disturbance to pass the *consultum ultimum* under which C. Gracchus, who had done no wrong, and

¹ Livy 39.8-19; C. I. L. 1.196 = 10.104.

² Livy 40.37.

³ Plutarch Ti. Gracch. 16.

⁴ Plutarch C. Gracch. 4; Cic. Lael. 37.

⁵ Cic. Rab. Perd. 12; Verr. 5. 163; Sest. 61; Schol. Gronov. 412; Schol. Ambros. 370; Plut. C. Gracch. 4.

⁶ Sall. Cat. 51; Cic. Cat. 1.28; 4.10.

⁷ Cic. Dom. 82; Plut. C. Gracch. 4.

⁸ 414 B.C. See Livy 4.50.6 ff.; for later cases see Livy 8.18; Val. Max. 2.5.3 and Livy 9.26.

many of his followers were murdered. Not content with this achievement, the same body appointed a special commission which mercilessly hunted down and put to death his adherents, without granting them an appeal. From that time to the end of the republic the *optimates* strenuously insisted that the senate had a right to issue the *consultum ultimum* and to appoint special courts at its discretion, whereas the *populares* as obstinately maintained that these acts were violations of law and destructive of liberty. The *optimates* readily acknowledged the validity of the Sempronian law and of all other laws of appeal, and claimed that they were as earnest upholders of these statutes as the *populares* could be. But they asserted that all the *leges de provocatione* were for the protection of the citizens only, and that those who attempted flagrantly to overthrow the republic ceased, by that very act, to be citizens, and were accordingly no longer under the protection of the laws. They claimed that private citizens had a right to slay such persons¹, and that it was even more the duty of the consul to lead a man like Catiline untried to death².

Accordingly, when the plottings of Catiline began to come to light, the senate passed the *consultum ultimum*, which clothed the consuls with absolute military and judicial power³. That Catiline and his associates were *hostes* Cicero constantly reiterates⁴. He asserts that by their own act they have forfeited their right to the citizenship and to the protection of the laws of appeal⁵. It is a curious fact that Caesar agreed with him that the Sempronian law did not protect these men⁶. The reason may be found in the circumstance that he was suspected of having a hand in the plot, and wished therefore to show himself not too favorably disposed toward the conspirators. To make himself appear as white as possible, he voiced a sentiment which his party utterly and eternally repudiated.

In the first Catilinarian Oration Cicero speaks of the *consultum ultimum*, for the simple reason that he is then thinking of proceeding alone as a magistrate to arrest and execute Catiline, the decree having given him this extraordinary right. But in the fourth Catilinarian, addressed likewise to the senate, he does not even hint at the existence of such a decree. What is the reason for this change of attitude? The answer is certain. He is now not simply threatening an arrest but is actually dealing with several prominent accomplices of Catiline, already under arrest, and he is unwilling to take upon himself the responsibility of deciding their fate, even though backed by the *consultum ultimum*.

He has determined that the senate is to be the court for the trial of the case of these conspirators. This fact Professor Abbott has pointed out (The Classical Journal 2. 124). Cicero accordingly applies the term *iudicare* to the action of the senate in the case¹, and afterward speaks of the procedure as a judicial trial². This fact, too, is mentioned by Professor Abbott, who supposes, however, that the senate had no constitutional warrant for such an action. But from a good authority we learn that the warrant existed. In speaking of the powers of the senate in the time of the Punic Wars Polybius says (6.13.4): 'In like manner it is the business of the senate to deal with all crimes committed in Italy which demand a public investigation—I mean such cases as treason, conspiracy, poisoning and wilful murder'. These cases concerned non-citizens. Now, bearing in mind that in the view of the *optimates* the persons on trial had ceased to be citizens, we understand how it was that, according to the well-known Roman usage, the senate had jurisdiction over them.

This was the doctrine of the *optimates*. That the *populares* took an entirely different view of the proceedings soon became evident. On retiring from his consulship, December 31, 63, Cicero was forbidden by a tribune, Q. Metellus Nepos, to address the people. The ground alleged was that he had put Roman citizens to death untried³. The personal motive of the tribune should not obscure the fact that a vital issue was involved. The same must be said of the policy of P. Clodius Pulcher, tribune in 58 B.C., in relation to Cicero. This man was a strange compound of demagogue and statesman. We should judge him, not by the words of his eloquent adversary, but by his own public acts. Some of the *plebiscita* which he proposed and carried in his tribunate were wise and salutary. But we are here interested in the comitial act which prescribed the penalty of interdict from fire and water for anyone who had put to death a Roman citizen without trial⁴. Strengthening the Sempronian law of appeal, it forced the party issue as to whether that act could apply to persons accused of having attempted to overthrow the state. From a democratic point of view the Clodian law was not only just but necessary for the protection of personal liberty and in the interest of progress; but unfortunately Cicero, who in putting to death the associates of Catiline had simply acted for the senate, was made the scape-goat. Fearing condemnation under the law, Cicero voluntarily retired into exile, whereupon a new *plebiscite* declared the interdict to be legally in operation. Notwithstanding Cicero's repeated denunciations of the uncon-

¹ Cic. Cat. 1.3.

² Cic. Cat. 1.2.

³ Cic. Cat. 1.3, 4. On the fulness of the power see Sall. Cat. 29.

⁴ Cic. Cat. 1.5, 13, 27; 2.1, 11, 17.

⁵ Cic. Cat. 3.15.

⁶ Cat. 4.10.

¹ Cat. 4.10, 18.

² Pis. 7.14.

³ Plut. Cic. 23; Cic. Ad Fam. 5.2.7 and *pass.*

⁴ Vell. 2.45.1; Livy 103; Div. Coss. 38.14.4; Plut. Cic. 30.

stitutionality of the latter act, the tribunician assembly, in passing it, kept itself strictly within the limits of precedent¹.

In this paper we are considering, not the abstract equity or the expediency of the procedure, but the legality. The conflict of opinion—both ancient and modern—in the case can be rightly settled from the point of view neither of American nor of English usage, but solely on the ground of Roman law. And the question was decided adversely to the senate, in the Roman way, through the *Lex Clodia De Provocatione*, by the supreme power; for the Twelve Tables declare that what the people vote last shall be law and valid. In favor of Cicero's cause it must be said, however, that in the trial and execution of these conspirators he acted not capriciously and arbitrarily, but on a principle he believed to be legal and for the best interests of the commonwealth, which he dearly loved.

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REVIEW

The Greek Genius and its Meaning to Us. By R. W. Livingstone. Oxford: at the Clarendon Press (1912). Pp. 250. \$2.00.

Mr. Livingstone disarms criticism by disclaiming finality. His object, on the whole admirably accomplished, is to stimulate and suggest, and to help other students of Greek life and literature, whether by agreement or disagreement, "to give some definition and coherency to the fleeting impressions, which are often all that is left after ten years' study of the Greeks". Ten years! It is the number of Epic convention and also of Philistine diatribes on the waste of time in classical education. Do they really study Greek ten years in England? No wonder that they find our Rhodes Scholars imperfectly prepared. I do not wish to cavil at the phrases which Mr. Livingstone employs to justify and recommend his ambitious undertaking. But the implication that the possession of a few comprehensive formulas summing up the Greek genius is the chief abiding value of the study of Greek is a wide-spread delusion of popular culture. It is this temper that constrains the extension lecturer on literature to harp on his author's 'message'. Is the Greek spirit the gospel of beauty, freedom, lucidity, directness, human versatility, or some happy blend of them all? And how many of these elements would be omitted by an optimistic exchange professor expounding the French, German or American spirit?

Mr. Livingstone, however, cleverly anticipates the objection that Greek civilization endured for fifteen hundred years and that the genius of this or of any race is too vast and complicated a thing to be summed up in a formula. In spite of exceptions,

variations and 'sports', there is a central tradition of what is most significant for us and at the same time perhaps most representative of the true national soul. It is this he seeks—in literature rather than in art and life, though he elsewhere, indeed, seems to contradict himself by saying that "the portrait which would serve us best is that of an ordinary man"—in Athens rather than in Sparta, and in the period 600-400 B.C. in which Nietzsche found the real Greece, though here again there is a touch of inconsistency when he later speaks of himself (204) as seeking "notes or characteristics which are found alike in Homer and in Lucian, in Herodotus and in the late epigrammatists of Byzantium".

Self-contradiction, indeed, is as inseparable from this theme as it is from mythology. The philosophy or science of literature is neither philology nor science. It is art, a form of rhetoric. This is not to condemn such work, as Mr. Livingstone's or the more sober book, *Greek View of Life*, by Mr. Lowes Dickinson, or the vast repertoires of opinions about the Greeks tabulated by Billeter. It is a branch of literature that appeals to the human instinct for short cuts to omniscience and Pisgah prospects of promised lands of culture. But it needs the control of the scholar's conscience in the writer and a challenging critical alertness in the reader; otherwise in striving for the impossible formula that shall express the totality of the Greek spirit we shall blur the definitions and distinctions that really explain and interpret a Pindar, an Aeschylus, a Sophocles, a Euripides, a Thucydides, a Plato, a Lucian. A generalization that excludes these or distorts our view of them may cost more than it gives.

Mr. Livingstone abandons himself to a succession of such generalizations, which he has not always succeeded in harmonizing with one another, or with his criticism of particular authors. His introductory chapters on *The Note of Beauty*, *The Note of Freedom*, *The Note of Directness* are excellent, nor are they any the worse for being in the main conventional, that is, sane and true, or for repeating much that Symonds, Jebb, Arnold, Ruskin and Pater have made familiar to the readers of the last generation. We need not hold him to too strict an account for the seeming contradictions into which he falls in the endeavor to attribute every type of excellence to the Greeks. In *The Note of Humanism* he tells us in one place (113) that the Greeks had not felt the difficulty of reconciling the higher and the lower nature, and did not need the solution of Christian grace. Yet some twenty pages later we read (136) that the Greeks "had indeed the emotional temperament of a southern nation, but they were continually fighting to keep it in subjection to reason. . . . Often the struggle ended in defeat; but the greatest Greeks

¹ Botsford, *Roman Assemblies*, 446, and Note 1.